

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SISTER JUDITH LYNN GARDENHIRE
etc.,

Petitioner,

v.

SUPERIOR COURT OF SANTA CLARA
COUNTY,

Respondent;

JOSEPHINE A. FRANCESCONI et al.,

Real Parties in Interest.

H026601
(Santa Clara County
Super. Ct. No. PR-151664)

ORDER MODIFYING OPINION

NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on March 22, 2005, be modified as follows:

1. On page 2, first full paragraph, beginning “In January 2002,” is deleted and the following paragraph is inserted in its place:

In January 2002, Pulizevich executed a will, in which she expressly revoked all prior wills. Although she did not mention the Trust, Pulizevich stated that it was her intent “to dispose of all real and personal property which I have the right to dispose of by Will” In particular, Pulizevich left her personal property to Francesconi. Pulizevich put the residue of her estate into a testamentary trust for the benefit of Francesconi and Barilovic. In connection with that trust, Pulizevich expressly provided, among other things, that Barilovic could live in an apartment on the Property as long as she wished. Pulizevich named

Francesconi and the president of St. Anne's Maternity Home (St. Anne's) as trustees. Pulizevich also provided that upon the deaths of Francesconi and Barilovic, the principal and interest of the testamentary trust estate would vest in St. Anne's.

There is no change in the judgment.

Petitioner's petition for rehearing is denied.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.